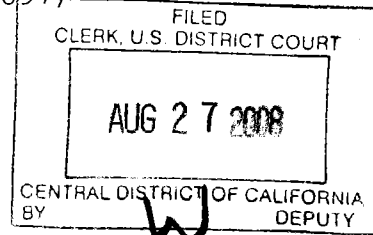


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8 Attorneys for Plaintiff
 9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,) No. CR 06-295-R
 13)
 Plaintiff,) ~~PROPOSED~~ ORDER DENYING DEFENDANT
 14) RONALD JOSEPH SAMUEL'S MOTION TO
 v.) COMPEL GOVERNMENT TO FILE A MOTION
 15) PURSUANT TO FEDERAL RULE OF
 RONALD SAMUEL, et al.,) EVIDENCE 35(b)(1)
 16)
 Defendants.)
 17)
 18)
 19)

20
 21 On August 18, 2008, defendant's motion to compel the
 22 government to file a motion pursuant to Federal Rule of Criminal
 23 Procedure 35(b) came on for hearing. Defendant claimed that the
 24 government arbitrarily refused to file a Rule 35(b) motion for
 25 reduction of sentence for defendant's post-sentencing
 26 cooperation. The government responded that it did not file a
 27 Rule 35(b) motion because defendant did not provide substantial
 28 assistance in the prosecution or investigation of another person

1 post-sentencing, and that the specific reasons underlying this
2 decision were rationally related to legitimate government goals.

3 After hearing argument from all the parties and considering
4 all the facts, the Court finds that defendant has not carried his
5 burden of showing that the government acted arbitrarily or in bad
6 faith when it declined to file a motion to reduce defendant's
7 sentence pursuant to Federal Rule of Criminal Procedure 35(b).
8 Although a post-sentencing investigation was conducted in this
9 case, no prosecution resulted therefrom. Rule 35 is addressed to
10 the government, and thus the determination of whether a
11 defendant's post-sentencing cooperation amounts to substantial
12 assistance meriting a further reduction of sentence is to be made
13 by the government. The Court will not second guess the
14 government's evaluation of defendant's post-sentencing
15 cooperation when, as is the case here, there is no evidence that
16 the government's decision not to file a Rule 35(b) motion was
17 made arbitrarily or in bad faith.

18 Moreover, under all the circumstances, even if the Court had
19 been aware of the additional information provided by defendant at
20 the time of the original sentencing, the result would not have
21 been any different and the Court would not have reduced
22 defendant's sentence below 78 months' imprisonment.

23 Based on all these facts and findings, IT IS HEREBY ORDERED
24 that defendant's motion to compel the government to file a Rule
25 35(b) motion is DENIED.

26 DATED: Aug. 27, 2008


27 THE HON. MANUEL REAL
28 United States District Judge